IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES	**CRIMINAL ACTION**
v.	
JAMILLE BARKSDALE	**NO. 08-186-03**

O R D E R

AND NOW, this 27th day of March, 2018, upon consideration of Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence filed by *pro se* defendant, Jamille Barksdale (Document No. 444, filed November 20, 2017), United States' Motion to Dismiss Petitioner's Unauthorized Second Motion Under 28 U.S.C. § 2255 (Document No. 448, filed December 1, 2017), Motion in Opposition to the Government's Request to Dismiss Petitioner's § 2255 Motion as Successive & Memorandum of Law in Support Thereof filed by *pro se* defendant (Document No. 449, filed January 16, 2018), and United States' Reply to Petitioner's Opposition to Motion to Dismiss Unauthorized Second Motion Under 28 U.S.C. § 2255 (Document No. 450, filed January 25, 2018), **IT IS ORDERED** as follows:

1. Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence filed by *pro se* defendant, Jamille Barksdale, is **DISMISSED WITHOUT PREJUDICE** to *pro se* defendant's right to seek authorization from the United States Court of Appeals for the Third Circuit to file a second or successive *habeas corpus* motion pursuant to 28 U.S.C. § 2244(b)(3)(A);

2. United States' Motion to Dismiss Petitioner's Unauthorized Second Motion Under 28 U.S.C. § 2255 is **DENIED AS MOOT**; and,

3. *Pro se* defendant's Motion in Opposition to the Government's Request to Dismiss Petitioner's § 2255 Motion as Successive & Memorandum of Law in Support Thereof is **DENIED AS MOOT.**

IT IS FURTHER ORDERED that a certificate of appealability will not issue because reasonable jurists would not debate (a) this Court's decision that the Motion does not state a valid claim of the denial of a constitutional right, or (b) the propriety of this Court's procedural ruling(s) with respect to *pro se* defendant's claim(s). *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The decision of the Court is based on the following:

I. INTRODUCTION

On January 11, 2010, *pro se* defendant, Jamille Barksdale, pled guilty to one count of conspiracy to distribute five kilograms or more of cocaine and four counts of distribution and possession with intent to distribute cocaine. Although § 4B1.1 of the United States Sentencing Guidelines ("Guidelines") recommended a life sentence in light of the severity of *pro se* defendant's offense and two prior felony convictions under 35 Pa. Stat. Ann. 780-113(a)(30) and (f) for the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance, the Court imposed a below-Guidelines sentence of 180 months.

On February 2, 2012, *pro se* defendant filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence. An Evidentiary Hearing on the Motion was held on April 24, 2013. By Order dated June 13, 2013, *pro se* defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence was denied on the merits and the Court declined to issue a certificate of appealability. No appeal of this decision was taken.

On November 22, 2017, *pro se* defendant filed a second Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence ("§ 2255 Motion"), which is now pending before the Court. *Pro se* defendant asserts in his § 2255 Motion that he is entitled to relief in accordance with the decision of the United States Supreme Court in *Mathis v. United States*, 136 S.Ct. 2243 (2016). *Pro se* defendant's sole claim in his § 2255 Motion is that this Court's application of the career offender enhancement at sentencing under § 4B1.1 of the Guidelines violated the rule in *Mathis.*

II. ANALYSIS

In his Motion, *pro se* defendant challenges the sentence imposed by the Court. That is a challenge properly brought under § 2255. Collateral attacks by a federal prisoner under § 2255 may reach "the legality of a sentence." *Bennett v. Soto*, 850 F.2d 161, 162 (3d Cir. 1988). Section 2255 "does not grant jurisdiction to a district court over all post conviction claims, but has been conceived to be limited to those claims which arise from the imposition of the sentence as distinguished from claims attacking the execution of the sentence." *Wright v. United States Bd. of Parole*, 557 F.2d 74, 77 (6th Cir. 1977). In contrast, claims attacking the execution of a sentence such as the wrongful revocation of parole or change in the place of imprisonment are "cognizable solely under § 2241." *Id.*; *accord Coady v. Vaughn*, 251 F.3d 480, 485 (3d Cir. 2001).

In this case, *pro se* defendant challenges the lawfulness of the career offender enhancement imposed by the Court under § 4B1.1 of the Guidelines. Thus, his Motion is brought properly under § 2255.

Motions for collateral relief brought under § 2255 are subject to the strictures of the Antiterrorism and Effective Death Penalty Act ("AEDPA"). Pursuant to AEDPA, a defendant is

prohibited from filing a second or successive motion for *habeas corpus* relief without first obtaining approval from the United States Court of Appeals. 28 U.S.C. § 2255(h); *see Benchoff v. Colleran*, 404 F.3d 812, 816 (3d Cir. 2005). A Court of Appeals may authorize the filing of a second or successive habeas corpus motion under § 2255 only if the motion contains: "(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. § 2255(h)(1)-(2). Absent such authorization, the district court lacks jurisdiction to consider the merits of a second or successive motion under § 2255. 28 U.S.C. § 2244(b)(3)(A); *United States v. Trader*, 328 F. App'x 111, 112 (3d Cir. 2009); *Robinson v. Johnson*, 313 F.3d 128, 139-40 (3d Cir. 2002). *Pro se* defendant has not received authorization from the Third Circuit to file the present Motion. Consequently, *pro se* defendant's § 2255 Motion must be dismissed. 313 F.3d at 139-40.

Mathis, 136 S. Ct. 2243 (2016), does not entitle *pro se* defendant to relief from the bar on second or successive *habeas* motions under § 2255(h)(2). In *Mathis*, the Supreme Court held that "burglary" under the Iowa Code did not constitute a "violent crime" under the Armed Career Criminal Act, 18 U.S.C. § 924(e) ("ACCA"). 136 S. Ct. at 2250. The ACCA provides sentencing enhancements "if a defendant is convicted of being a felon in possession of a firearm following three prior convictions for a 'violent felony.'" *Id.* at 2248 (citing 18 U.S.C. § 924(e)). The ACCA includes a list of violent felonies, which the Supreme Court interpreted in an earlier decision, *Taylor v. United States*, as referring only to the "generic versions" of the offenses and not necessarily each state's "variant[] of the offense." *Id.* (citing *Taylor*, 495 U. S. 575, 598

(1990)). Under the decision in *Taylor*, a conviction for an offense under state law may qualify as a "violent crime" under the ACCAA only "if its elements are the same as, or narrower than, those of the generic offense. But if the crime of conviction covers any more conduct than the generic offense, then it is not [a 'violent crime' under the] ACCA." *Id.* Iowa's burglary statute includes entry into any "land, water, or air vehicle" as well as any "building [or] structure," while " generic burglary" is limited to entry into a "building or other structure." Based on that construction, the Supreme Court in *Mathis* concluded that "burglary" under Iowa law was broader than "generic burglary" under the ACCA and did not warrant an enhanced sentence. *Id.* at 2250.

Pro se defendant's reliance on *Mathis* is misplaced. *Mathis* does not announce "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court" as required by § 2255(h)(2). Because *Mathis* relied, in part, on Sixth Amendment principles, this Court will assume, *arguendo*, that the rule applied in *Mathis* is "constitutional." 136 S. Ct. at 2252. Nonetheless, that rule is not a new one. *Id.* at 2251-52. A "case announces a new rule if the result was not dictated by precedent existing at the time the defendant's conviction became final." *Welch*, 136 S. Ct. at 1264 (citing *Teague v. Lane*, 489 U.S. 288, 301 (1989)). As the Supreme Court made clear in *Mathis*, that decision was the result of the application of "longstanding principles, and the reasoning that underlies them," first articulated in *Taylor v. United States*, 495 U.S. 575 (1990). 136 S. Ct. at 2251. In *Mathis*, the Supreme Court described the rule governing ACCA cases as a "mantra" and that further elaboration on that rule ran the "risk of repetition (perhaps downright tedium)." *Id.* at 2252. Consequently, this Court concludes that the result in *Mathias* was dictated by existing precedent. The rule is thus not new and does

not entitled *pro se* defendant to the relief sought. *Accord United States v. Taylor*, 672 Fed. App'x 860, 864 (10th Cir. 2016) ("*Mathis* did not announce a new rule.").

Pro se defendant raises two additional arguments, both of which lack merit. First, *pro se* defendant argues that, under *Teague v. Lane*, 489 U.S. 288 (1989), his *Mathis* claim should proceed because it "concerns the scope of criminal statutes" and is therefore "clearly substantive in nature," rather than procedural. Opposition at 6, 8-9. Like § 2255(h), *Teague* addresses the retroactivity of only "new" rules, including those that place "certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe." *Teague*, 489 U.S. at 311; *Graham v. Collins*, 506 U.S. 461, 477 (1993). As described above, the rule applied in *Mathis* is not a new rule, but the application of "longstanding principles." *Mathis*, 136 S. Ct. at 2251. Thus, *Teague* does not entitle *pro se* defendant to relief.

Second, *pro se* defendant argues that because the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. at 2557, which held that the residual clause of the ACCA was unconstitutionally vague, applies retroactively, *Welch*, 136 S. Ct. at 1265, so too must the Court's decision in *Mathis*. *Pro se* defendant's argument fails for the same reason as above: unlike *Mathis*, *Johnson* "announced a new rule" that "alter[ed] the range of conduct . . . the law punishes" and was thus retroactively applicable under *Teague*. *Welch*, 136 S. Ct. at 1265-66. *Mathis*, however, did not announce a new rule and cannot be applied retroactively under either *Teague* or *Welch*.

III. CONCLUSION

Because this Court is without jurisdiction to consider *pro se* defendant's unauthorized second Motion Under § 2255, it may not address the merits of his contention that his two prior convictions for possession with intent to distribute a controlled substance, in violation of 35 Pa.

Stat. Ann. 780-113(a)(30) and (f), were not "controlled substance offenses" under the career offender provision of the Sentencing Guidelines, U.S.S.G. § 4B1.1(a)(3), as that term is defined in U.S.S.G. § 4B1.2(b). Accordingly, *pro se* defendant's § 2255 Motion is dismissed without prejudice to his right to seek authorization from the Third Circuit to file a second or successive *habeas corpus* motion pursuant to 28 U.S.C. § 2244(b)(3)(A).

BY THE COURT:

/s/ Hon. Jan E. DuBois

DuBOIS, JAN E., J.